

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DANIEL VITOR MORILHA,

Plaintiff,

v.

PEOPLE OF THE UNITED STATES OF
AMERICA,

Defendant.

Case No. 23-cv-05008-JST

**ORDER DENYING MOTION TO
PERPETUATE TESTIMONY AND
MOTION TO EXTEND TIME FOR
SERVICE**

Re: ECF Nos. 27, 29

Now before the Court is Plaintiff Daniel V. Morilha’s petition to perpetuate testimony and motion to extend time for service. ECF Nos. 25, 29. The Court will dismiss the petition and deny the motion to extend time for service.

Morilha filed an amended petition to perpetuate testimony in this action on November 28, 2023. ECF No. 25. He brings this action following the Court’s dismissal of his related case, *Morilha v. Superior Court of California County of Santa Clara*, Case No. 22-cv-3565-JST (“*Morilha I*”), for lack of jurisdiction. Morilha now seeks “to perpetuate the testimony of three key witnesses to his complaint” pursuant to Federal Rule of Civil Procedure 27. ECF No. 25 at 2. He contends that “their independent testimonies will help to understand the scope of his complaint,” and “that some of them might have taken part either voluntarily or involuntarily into a broader investigation[.]” *Id.*

Rule 27 requires that a person who seeks to perpetuate testimony demonstrate that he “expects to be a party to an action cognizable in a United States court but cannot presently bring it or cause it to be brought.” Fed. R. Civ. P. 27(a)(1)(A). Morilha cannot satisfy this requirement, because he has already brought an action before this Court—namely, *Morilha I*. While Morilha claims he was unable to obtain discovery in his prior case, *see* ECF No. 27 at 2, that was because

1 it was dismissed for lack of jurisdiction. *See Morilha I.*, ECF No. 50 at 2–3. Thus, the
2 deficiencies here are twofold: Morilha *was* able to bring the action and it was ultimately found
3 *not to be cognizable*.

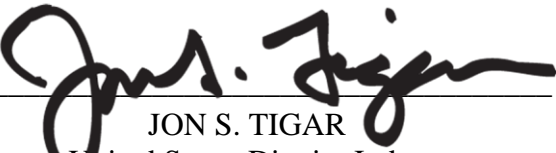
4 Accordingly, Morilha’s petition to perpetuate testimony pursuant to Fed. R. Civ. P. 27 is
5 dismissed.

6 Because Morilha’s motion for extending time for service is based upon his “intention to
7 perpetuate testimonies,” ECF No. 29 at 1, it will be denied as moot.

8 The Clerk shall close this case.

9 **IT IS SO ORDERED.**

10 Dated: January 26, 2024

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12 JON S. TIGAR
13 United States District Judge
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